S.B.CIVIL MISC. APPEAL NO.714/2006
RSRTC Vs. Ms. Hurra Banu & others

Date of order : 03.07.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.V.K.Mathur for the appellant

The appellant-RSRTC seeks to challenge the award dated 27.07.2005 made by the Motor Accidents Claims Tribunal, Udaipur, Headquarter Salumbar in Claim Case No.43/2005 whereby the Tribunal has awarded an amount of R.25,000/- to the respondent No.1 towards compensation for injuries sustained in motor accident involving bus bearing registration No.RJ 09-P-0797 plying on contract with the appellant-Corporation.

The claimant-Hurra Bano and her father Mohd. Shafi had boarded the aforesaid bus on 29.11.19989 at Kherwara Bus Stand and according to the claimant, while driving the bus rashly and negligently, the driver of the bus hit against an oncoming truck near Darshana Ghati and claimant and her father sustained several injuries. The claimant-Hurra Bano and her father, Mohd Shafi submitted separate claim applications seeking compensation for the loss suffered by them on account of the injuries sustained in the accident; and

the learned Tribunal after consolidating the trial had decided both the claim applications by the impugned award dated 27.07.2005.

After finding the accident to have occurred for rash and negligent driving of the bus driver, so far claimant-Hurra Bano is concerned, learned Judge of the Tribunal examined her injury report Ex.10 that shows her having sustained four injuries and the medical officer having reserved the opinion in relation to injuries Nos.1 and 2. However, in absence of further medical report or opinion, the learned Judge did not accept the injuries to be grievous nor accepted the certificate Ex.11 for the allegation of 10% permanent disablement. Learned Judge also found that the bills relating to medical treatment have also not been produced. In the aforesaid view of the matter, learned Judge awarded a lump sum of Rs.25,000/- as just compensation with 6% per annum interest from the date of filing of the claim application. A submission was made on behalf of the appellant-Corporation that vehicle in question being on contract with it, according to the condition of contract, the liability for compensation arising out of the motor accident is of the bus owner. The learned Judge rejected the contention with reference to the fact that bus in question was being plied in control and directions of the Corporation.

Assailing the award aforesaid, it has been contended by the learned counsel for the appellant-Corporation that as per the agreement entered into between the owner of the bus and the appellant-Corporation, the duty to indemnify the compensation claim is of the owner and not of the appellant-Corporation and the Tribunal has erred in making an award against the Corporation. Learned counsel has further assailed the quantum of compensation as being highly excessive and submitted that for the simple injuries shown on the person of the claimant, such award of Rs.25,000/- stands on the higher side and deserves reduction.

Having heard learned counsel for the appellant and perused the impugned award, this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed without being admitted.

So far the question of liability of the Corporation is concerned, consistently it has been held by this Court in such matters that the Corporation cannot be absolved from its liability to compensate the victims of an accident while the vehicle was being plied in its control. A Division Bench of this Court in D.B.Civil Special Appeal No.150/2003: RSRTC & another Vs. Naseer Khan and others, decided on 24.05.2005 has held,-

> "Thus, the view taken by this High Court that RSRTC cannot escape its liability to pay compensation has been affirmed by the Hon'ble Supreme Court. Since, the Division Bench decision was not reversed by the Hon'ble Supreme Court, the same is binding as far as this Court is concerned and if the condition shifting the liability of the Corporation to the owner is held to be invalid, there cannot be any enforcement of such contract in these proceedings.
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> This is apart from the fact that the controversy between the Corporation and the Insurance Company cannot be decided in the proceedings under Motor Vehicles Act. Insurer is not privy to contract between the appellant-Corporation and the owner of the vehicle from whom it has been hired and liability cannot be fastened on the Insurance for the negligent act of the driver which was not working under the control and instructions of the owner but was working under the control and instructions of the Corporation that is to say for the purposes of Motor Vehicles Act the driver was the employee of the Corporation who was working under the control and instructions of the Corporation and the Corporation was vicariously liable for the negligent act of the said driver. For the negligent act of the driver who was working under the control and instructions of the Corporation the registered owner of the vehicle cannot be held vicariously liable for the negligent act of the driver.
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> Be that as it may, the question of fastening of the liability on the owner or the Insurance by the Corporation by enforcing the agreement which is between the appellant-Corporation and owner cannot be decided in these proceedings."

The same view has been reiterated in D.B.Civil Special Appeal No.45/2003: RSRTC Vs. Smt.Asha Solanki and others, decided on 10.08.2005. This Court has also pointed out in

S.B. Civil Misc. Appeal No.317/1996 RSRTC Vs. Smt.Shakuntala Priya, decided on 12.04.2006 thus:

> "It may be noticed that though the decision in Kailash Nath Kothari's case (supra) was rendered by the Hon'ble Supreme Court in relation to the definition of 'owner' as contained in Section 2 (19) of the Motor Vehicles Act, 1939, however,for the purpose of the present case and for the purpose of Section 2(30) of the Motor Vehicles Act, 1988, the facts and factors taken into consideration by the Hon'ble Supreme Court would directly apply inasmuch as, the vehicle herein was also lent by the registered owner to the Corporation under an agreement and the Corporation was in possession and effective control of the vehicle; the services of the driver were also exclusively transferred along with complete control of the Corporation; and the passengers were being carried by Corporation on receiving fare from them. The driver of the bus, even though an employee of the owner, was at the relevant time performing his duties under the order and command of the conductor of Corporation and the passengers including the deceased had their privity of contract only with Corporation and, therefore, their safety became the responsibility of the Corporation and as ruled by the Hon'ble Supreme Court, the Corporation must be held vicariously liable for the tort committed by the driver while plying the bus under its control.

In this view of the matter, submission on behalf of the appellant for being absolved of liability to satisfy the claim for compensation cannot be accepted.

So far the quantum of compensation is concerned, of course from the discussion of the evidence on record, it appears that the Tribunal has not accepted the case of

disablement of the claimant nor has accepted the case of sustaining of any grievous injury and the claimant has not even produced bills of expenses. However, looking to the over all circumstances of the case where the claimant suffered four injuries; and opinion was reserved for two; even if the claimant has not produced further medical evidence, the award made by the Tribunal of a meagre amount of Rs.25,000/- towards compensation to the injured claimant cannot be said to be highly excessive so as to warrant any interference in appeal at the instance of the appellant-Corporation.

The appeal remains bereft of substance and is, therefore, dismissed summarily.

(DINESH MAHESHWARI),J.

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